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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 150.

THE UNITED STATES, Appellant,

v.

CHARLES BORCHERLING, Receiver, &c., Appellee.

BRIEF FOR APPELLEE.

FRANK W. HACKETT,
CORTLANDT PARKER,
For Appellee.

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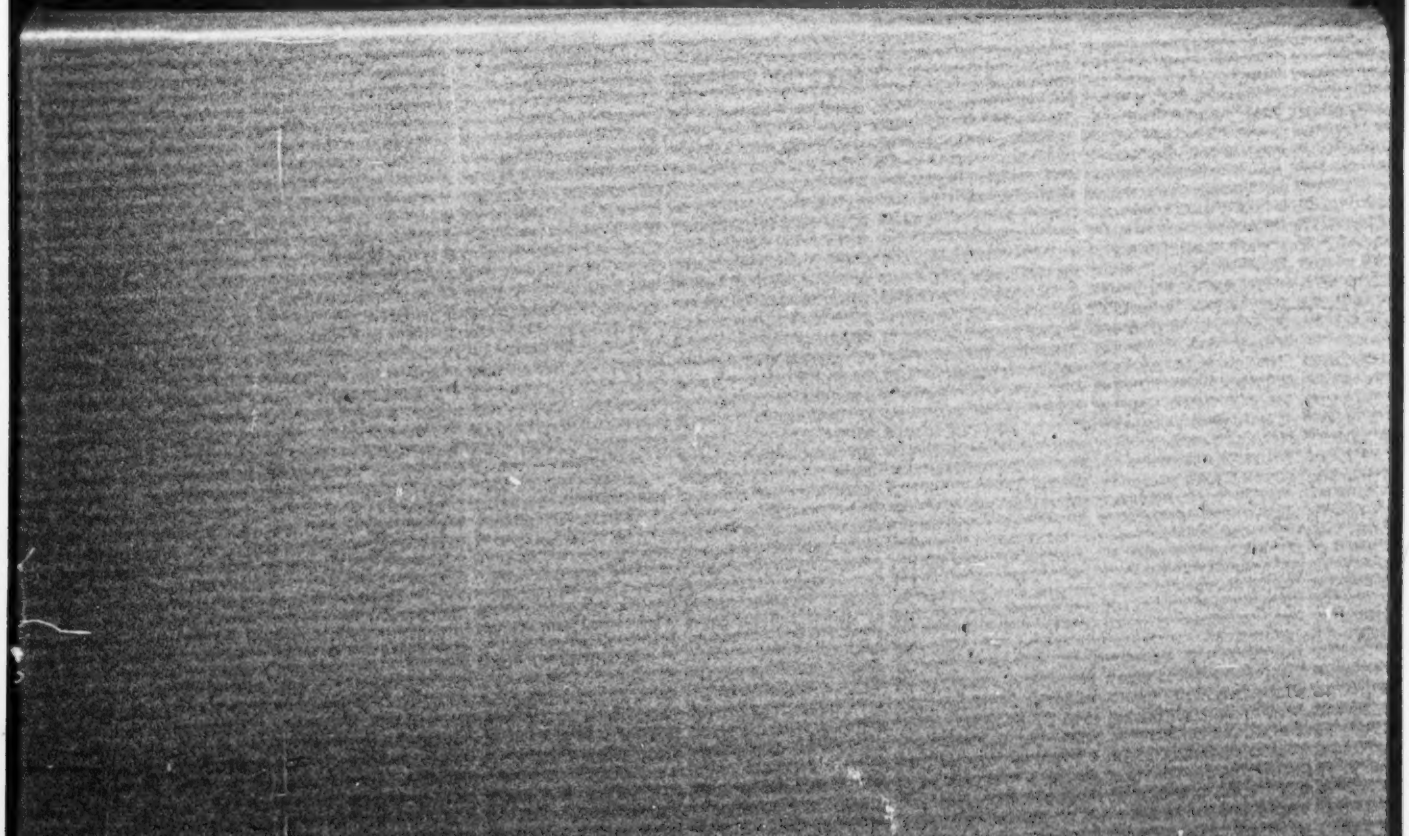

Supreme Court of the United States.

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THE UNITED STATES,
Appellant,
v.
CHARLES BORCHERLING,
Receiver, &c., Appellee.
No. 150.

APPELLEE'S BRIEF.

The question presented is:

A court of New Jersey, the domicil of Rodman M. Price, defendant in chancery proceedings, after personal service had upon him, appointed a receiver of all Price's personal estate: the receiver duly qualified and gave notice to the Secretary of the Treasury of the transfer to him under the New Jersey statute of all the choses in action of the debtor, Price, and requested the Secretary to pay to *him* (the receiver), a sum of money due Price on the books of the Treasury. Could the Secretary in disregard of the notice pay to Price in person the money, or a part thereof, and to that extent discharge the debt and free the United States from liability over to the receiver?

To decide this question it is necessary for us to examine:

1. The power of a receiver in supplementary proceedings under the statute of New Jersey, as respects his succeeding to the ownership of money due the debtor upon an account stated by the United States.

2. The duty of the officials of the United States to recognize the authority that a receiver at the debtor's domicil has to collect and discharge a debt primarily due from the United States to the person of whom he is receiver.

I.

ALL RIGHT AND TITLE IN PRICE TO COLLECT OF THE UNITED STATES THE MONEY FOUND DUE HIM PASSED TO THE RECEIVER. NO RIGHT REMAINED IN PRICE TO RECEIVE THE MONEY, OR TO GIVE LAWFUL QUITTANCE THEREFOR TO THE UNITED STATES.

1. The statute of New Jersey with respect to unsatisfied judgments at law provides that the court may compel a discovery by the debtor of his personal property, money or things in action; and that witnesses may be required to testify "concerning said matters"; that after the debtor's examination and that of the witnesses shall have been certified to the Chancellor, it shall be lawful for him—

"to appoint a receiver *pendente lite* of the property and things in action belonging or due or held in trust for said debtor as aforesaid, who thereby shall receive authority to possess, receive and in his own name, as such receiver, sue for such property or things in action." *Revision Laws of N. J., 120.*

A receiver appointed in proceedings supplementary to execution is vested with the legal title of the debtor to all property owned by him at that time, whether in the actual possession of the debtor, or in the possession of any one for his own use. *Smith on Receivers*, (1897) 259. No formal order of assignment is necessary to pass the title of the defendant to a receiver. The appointment vests in him the title to the property, except such as is exempt from levy and sale. *Ib.* 65.

In *Harrison* v. *Maxwell*, 44 N. J., 316, it is held that an equitable interest in a replevin bond passes to a receiver.

"With regard at least to the personal property, choses in action and equitable interests of the debtor, the title passes to the receiver in virtue of his appointment without any formal assignment by the debtor." Per DEPUE, J., *citing authorities.*

After the 10th of October, 1892, the claimant, Mr. Borcherling, under the statutory power exercised by the Court of Chancery, became as an officer of the court the owner of all the personal property of Price wherever situated.

The passing to a receiver of the right to be paid by the Treasury is not prohibited by sect. 3477 of the Revised Statutes, relative to assignments. *Price* v. *Forrest*, 173 U. S., 410.

2. The claim upon the Treasury was personal estate of Price, situated within the State of New Jersey. It passed by operation of law to the claimant, as effectively as any other personal property actually within the jurisdiction of the court. When the accounting officers of the Treasury had once fixed the amount due to Price, nothing further remained to be done but to pay over the money to the person legally entitled to receive it. The right to receive this money was a chose in action. Such a right can be said only by fiction of law to have locality. The authorities are in conflict with respect to the *situs* of a private debt, where questions have arisen between courts of different States. It may now, however, be declared to be settled that the *situs* of a claim against the United States is that of the domicil of the creditor.

Debts due from the United States have no locality at the seat of Government. *Vaughan* v. *Northrup*, 15 Peter, 1. Mr. Justice STORY says:

"The United States in their sovereign capacity have no particular place of domicil, but possess in contemplation of law an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicil."

The question here related to taking out administration based upon a claim that the decedent had against the United States.

At a later period (1883) attempt was made in the District

of Columbia by a creditor to obtain by mandamus the possession of certain drafts payable to a decedent, whose domicil at the date of death was Tennessee, but upon whose estate letters of administration had been granted by the Supreme Court of the District, upon the ground that the Treasury draft represented local assets in Washington. The court of the District ordered the writ of mandamus to issue. But the Supreme Court of the United States reversed the judgment, and held that a debt due from the United States was assets in Tennessee; that the officers of the Treasury may pay a debt due to the estate of a deceased person, either to the administrator appointed in the State of his domicil, or to an ancillary administrator duly appointed in the District of Columbia; and that the exercise of their discretion in this regard can not be controlled by writ of mandamus. *Wyman* v. *Halstead*, 109 U. S., 654.

All debts follow the person, not of the debtor in respect of the right of property, but of the creditor to whom due. Per NELSON J., *Williams* v. *Ellett*, 9 Wall., 743.

In a late case in the Circuit Court, Eastern District of Tennessee, CLARK J., discussing the question of the *situs* of a debt in respect to the right of garnishment, says:

"Does the debt follow the creditor and his domicil, or the debtor and his domicil? The legal title and right are clearly in the creditor, and by analogy to the principle that constructive possession is with the rightful owner, we would expect that the chose in action, particularly a debt, follows the person of the creditor. And such is the established rule. *Tappan* v. *Bank*, 19 Wall., 490; *Kirtland* v. *Hotchkiss*, 100 U. S., 491; *State Tax on Foreign Held Bonds*, 15 Wall., 300," citing many other authorities. *Central Trust Company* v. *Chattanooga R. R. Co.*, 68 Fed. Rep., 689.

"In construing the meaning of the words 'property in this State' we have held," say the Court in *Holbrook* v. *Ford*, 153 Ill., 645, "that since the only property right which there can be in a debt is the mere right to receive

payment of it, it is impossible that there can be anything of a tangible nature connected with such right which can occupy locality, so the property right must accompany and remain with the person of the owner of the debt, and therefore it cannot be in this State when the domicil of the owner is in another State. *Cooper* v. *Beers*, 143 Ill., 25."

These were private debts and not a debt due from the United States; but the authorities clearly indicate that ordinarily the *situs* of every description of indebtedness is properly to be regarded as being that of the domicil of the creditor. It is true that for some purposes the *situs* has been considered to exist at the domicil of the debtor, but this is allowed chiefly for the purpose of collection. It is a fiction resorted to in cases of garnishment and attachment. The locality so given is an additional *situs;* its conception does not exclude the theory that a *situs* exists likewise at the domicil of the creditor.

The subject of the *situs* of choses in action is well handled in an article by Hollis R. Bailey, in *The Harvard Law Review*, for June, 1897, vol. 11, pp. 95–113. The article refers to two previous articles by the same writer, "Assignment in Insolvency and its Effect Upon Persons Outside of the State." 7 *Ibid*, 281: "A Discharge in Insolvency and its Effect on Non-residents." 6 *Ibid*, 394. These articles present the latest authorities bearing on the subject. Their author treats of the "conflict of laws" that attends the theory of the *situs* of a debt, points out the confusion that exists among the authorities, and advances strong reasons why it ought to be done away with. It does not appear that in regard to private debts courts have ever gone to the length of denying that a *situs* does exist at the domicil of the creditor.

The Court of Claims (RICHARDSON, Chief Justice), have said "We are unable to see how a claim due from the United States can be a legal asset in the District of Columbia;" *King, Adm.*, v. *U. S.*, 27 Ct. Cl., 537; where it held that letters of administration granted by the Supreme Court

of the District of Columbia, on a petition that showed that the only alleged assets in the District consisted of a claim against the United States pending in the Court of Claims, were void for want of jurisdiction. The opinion in this case discusses the meaning of the decision in *Wyman* v. *Halstead*, and makes it clear that the Supreme Court did not intend to lay down the doctrine that the existence alone of a claim against the United States would be ground for issuing ancillary letters in the District of Columbia.

"Ancillary administration might be granted in the District of Columbia if the deceased had local assets, and if granted on that ground it would also embrace claims against the Government. The decision has no application to an administrator not *duly* appointed."

A late expression of views upon this subject by the Supreme Court of the United States will be found in *Cole* v. *Cunningham*, 133 *U. S.*, 128. Says FULLER, C. J.,

"Undoubtedly the fiction of the law that the domicil draws to it the personal estate of the owner, wherever it may happen to be, yields whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined, and always yields where the laws and policy of the State where the property is located invalidate a transfer, even though valid by the law of the assignor's domicil."

It is apparent, therefore, that unless reasons appear to the contrary, we are justified in the assumption that the right of Price to this money constituted a personal asset in the State of New Jersey. Had Price died at a time when it was necessary to take out administration for the purpose of collecting this money, such administration would have been granted in New Jersey, and payment to the New Jersey Administator would have followed as a matter of course.

The "claim" being situated in New Jersey, passed by operation of law to Borcherling, assignee. By this we mean that it passed to Borcherling, not only as against Price, but as against the United States.

If, for purposes of administration upon the estate of a deceased creditor of the United States, the Treasury is considered to be in the State of that creditor's domicil (e. g., New Jersey, at the death of Price,) and not elsewhere, upon what principle can it be contended that a claim against the United States is elsewhere than at the domicil, when the creditor himself is present in a court of the domicil and submitting to its authority? Being present, and the claim being there; and, under the statute regulating assignments, no objection existing to the operation of law which affects to assign the claim—why does not all property in the claim pass *eo instanti* to the receiver? If it once so passes, it becomes the property of the receiver, so far as the United States is concerned; the receiver succeeds to all the rights of the insolvent debtor, and thus by operation of law the receiver becomes the rightful creditor of the United States. Mr. Borcherling became the legal creditor of the United States, in lieu of Price, October 10, 1892.

This must be so, unless for grave reasons the United States is to be excepted from the operation of the statute transferring a debtor's things in action to a receiver for a just distribution to his creditors. But no good reason can be conceived why the action of the Chancery Court of New Jersey upon the *status* of the personal property of Price, should not bind the officials of the Treasury. Those officials deal directly with a creditor of the United States. *He* may not assign his right; but a court of plenary jurisdiction clothed with statutory authority to that end may change the *status* of all his personal property, a claim against the United States included.

II.

THE TREASURY OFFICIALS SHOULD HAVE PAID TO THE RECEIVER ALL THAT HAD BEEN FOUND DUE TO PRICE.

All of Price's personal property had passed to the receiver. Notice had been given in ample season to the Treasury that

by operation of law Price was no longer entitled to collect and dispose of the money due upon this claim. It therefore became the plain duty of the Treasury officials to follow the legal effect of the action of the Chancery Court of New Jersey.

First, let us for a moment examine the grounds upon which it appears that the Treasury officials refused to listen to our protest against their paying to Price the money which he was not legally entitled to receive.

The Doctrine of the Want of Extra-Territorial Effect in Statutory Assignments.

The Assistant Secretary of the Treasury, who ordered payment to be made to Price, in the District of Columbia, of $7,900, apparently acted upon the theory that an assignment by operation of law in New Jersey was of no avail to pass property in the claim, because to recognize it would be in his opinion to give an extra-territorial effect to the action of a State court.

The objection that the appointment of Mr. Borcherling as a receiver had no extra-territorial effect, is not well taken, for the reason that the decided cases go no further than to indicate an unwillingness on the part of a State to recognize and enforce in its own courts the order of a court of another State appointing the receiver, so long as creditors of their own may be prejudiced thereby.

There has been contrariety of opinion, it is true, in the courts of the several States as to the effect of an assignment *in invitum*. The English rule is the logically correct one, viz: that a valid transfer of personal property, whether voluntary or under bankruptcy or insolvency proceedings, or in a case of a receivership, is valid everywhere, and will be enforced. The rule in this country, we admit, does not yet come up to the standard of that of England. As early as 1820, Chancellor Kent with a view of establishing the

English doctrine as the rule in New York, delivered an opinion to the effect that the result of an assignment by proceedings at law is, and ought to be, precisely that of a voluntary transfer, and that its full effect should be recognized everywhere. *Holmes* v. *Remsen*, 4 Johns. Ch., 460. But the able and well-directed efforts of this eminent jurist failed of their purpose.

The lack of speedy communication between distant parts of the Union in early days, and the influence of the idea then prevailing of State's rights, conspired to fix upon the jurisprudence of our State courts, a treatment of the subject of involuntary assignments neither liberal nor logical. A kind of State inter-territorial law grew up, founded upon an assumption that another State is assimilated to a foreign country. The courts have proceeded upon the idea of protecting their own citizens by refusing to recognize the binding force of a statutory assignment, so far as property within their own jurisdiction is concerned. They have not pronounced such an assignment void. The extent to which their decisions go is that a receiver appointed in another State shall not be permitted to avail himself of the process of the court, to the disadvantage of creditors of that jurisdiction. The underlying idea is well expressed by Mr. Justice NELSON, while speaking in a case of intestacy of the disposition of assets in a country other than that of the deceased:

"The difficulty does not lie in any defect of title to the possession, but in the limitation or qualification of the general principles in respect to personal property by the comity of nations founded upon the policy of the foreign country to protect the interests of its home creditors." *Wilkins* v. *Ellett* (1869), 9 Wall., 742.

The court of "another State" treats the assignment as something which may or may not be pronounced valid. If no creditors object, the assignment is recognized. In a

word, the court, in certain cases, *withholds a remedy*. The remedy is granted, however, where it does not prejudice local creditors.

What the court says to a foreign receiver is in effect as follows:

"You may not take property and remove it from this jurisdiction to satisfy general creditors, until after creditors who live here have had their chance to secure themselves. We do not admit that the statute of your State, under which property of the debtor has passed to you as receiver, can operate on property situated here,—at least, not until our own people have had opportunity to resort to such property for the satisfaction of their claims against the debtor."

What is termed "comity" between the States of this Union will be seen upon examination to be founded upon no other basis than that of expediency. There are no recognized and well-defined limits within which it is exercised.

The court, where the question of a foreign receivership comes up, is asked to apply a state of facts indisputably proved by the records of a sister State. It admits the creation of the receivership. It admits also that the personal property of the debtor has everywhere passed to the receiver, except so far as a portion of such property may be needed for the satisfaction of the claims of creditors within the State where it is actually found. The portion thus withheld is considered not as the absolute property of the debtor, unaffected by the receivership, but provisionally such, until the claims of home creditors are ascertained and satisfied. At the farthest, courts do not undertake to declare that an absolute property remains to the debtor within their jurisdiction. They only say that, for the purpose of aiding our own creditors, we shall treat this as if it were the property of the debtor subject to a lien. Obviously

this is nothing else than a doctrine of the remedy. It is not a determination of an absolute title.

It is the *creditor* within the State, be it remembered, whose rights are thus conserved and protected by the court. The debtor in these cases is a non-resident, and the court does not feel called upon to look out for him, or to protect his rights.

Let us suppose that A, living in the State of Virginia, had owed Price $500, and that the receiver had notified A to pay him, and not Price. Let us further suppose that there are no creditors of Price in Virginia, and that the receiver later brings suit in Virginia against A. A thereupon sets up in defense that he disregarded the notice and paid over the money to Price. Would this be a good defense? How can A call upon the courts of his State to help him?

Or, suppose he had paid the receiver, and subsequently that Price had come into Virginia and sued him for the debt, would not a plea of payment be a complete defense? We have found no case that extends the doctrine of a want of extra-territorial effect so far as to afford a defense to A in the circumstances first supposed.

But there is no need to examine the decisions in various jurisdictions based upon an alleged want of extra-territorial force in the judgments of the court of a sister State. They are numerous and conflicting. Summed up they amount to nothing more than an expression of a duty on the part of a court to protect "its own people." That an assignment of all the property of an insolvent debtor by the court of his domicil is without force beyond the limits of that particular State is a doctrine laid hold of in the administration of a remedy by the courts, and applied no further than to protect domestic or local creditors.

The Treasury Department, it is clear, has nothing whatever to do with protecting creditors; with granting or withholding remedies. This is a consideration that belongs

exclusively to the courts. The obligation imposed upon the Secretary of the Treasury with reference to paying debts of the United States is perfectly simple. He is to pay the legal creditor. This he must do without favor to any individual, or set of individuals. In paying the Price "claim," it was the duty of the Treasury officials to ascertain whether Price still continued to be the legal creditor of the United States. If he, in New Jersey, was no longer the legal creditor of the United States, because a court of the State where he lived had acted upon the *status* of his property, and conveyed it to the claimant, Borcherling, it is clear that he (Price) could not be such in the District of Columbia.

Nor could the Assistant Secretary of the Treasury properly consult the interest of any alleged creditors of Price living in the District of Columbia. It had never become a part of his official duty to consider creditors of Price, either in New Jersey, New York, in the District of Columbia, or anywhere else. The Treasury could take notice that by operation of law that which Price had owned as a claim against the United States had passed into the hands of a receiver, under an order affecting *all* of Price's property. Where did the Treasury Department acquire the right to pay a part of this money to Price, and the remainder to the receiver?

Booth v. *Clark.*

The Treasury officials may have been confirmed in their error by giving to the decision of the court in *Booth* v. *Clark* (17 How., 322), an effect that does not belong to it. The opinion in that case, containing as it does much that is *obiter*, had the effect to impress upon the practice of the Federal bench certain restrictive features, which, it is gratifying to observe, have in later years been gradually departed from. See remarks of Mr. Smith, the author of a well-considered work on Receivers (1897), page 166, as to the steady drifting away from the doctrine supposed to have been announced

in that opinion. Compare *Parsons* v. *Charter Oak Co.*, 31 Fed. Rep., 305.

Says John Lowell, formerly United States Circuit Judge:

"Some *dicta* in *Booth* v. *Clark* have been taken to mean that a receiver, or assignee, can not sue in the courts of a State, other than that of his appointment, but no such point was decided; and it is important to observe that the receiver in that case was one appointed under a bill in equity for the benefit of a single creditor, and might be considered to be a mere officer of the court appointing him. Receivers for the benefit of creditors generally, under proceedings for foreclosure or winding up, and assignees under a State insolvent law, have repeatedly maintained actions which have passed the ordeal of the Supreme Court, and on that point no question can now be raised." *Conflict of Laws as Applied to Assignments of Creditors*, 1 Harvard Law Review (1888), 260.

When the Chancery Court of New Jersey had appointed Mr. Borcherling receiver, it in effect created him an assignee in insolvency. Price, the debtor, had been given a day in court to disclose what, if any, property he possessed. The appointment of a receiver conclusively showed that Price had no property sufficient to pay his debts; or, at least, that he had declined to discover the existence of such property. In the orderly procedure of justice the decree of the Chancellor operated upon all the personal property of Price, wherever situated, and transferred the same to his assignee, Mr. Borcherling.

An Injunction Order and an Assignment by Operation of Law.

There is a distinction between an attempt by a court to assign a specific claim against the United States, thus in terms naming a new creditor which is virtually requiring the Secretary of the Treasury to pay the claim in question to some body other than the creditor himself—between such

an attempt, we say, and the operation of law, that acts generally upon all personal property of a debtor, wherever situated, in the nature of an assignment in insolvency. To the former supposed action, executive officers of the Government reply that they are not to be interfered with in the administration of their duties. In the latter case, however, the Treasury officials are just as amenable to the effect of the operation of the law as any one else. In the latter case a court is not directing them what to do. A statute has acted *in rem* upon the title to property. The devolution of title occurs much as it does when a court appoints a committee for a lunatic; or, a guardian for a spendthrift; or, an administrator of a decedent. A court with full power to act notifies the world that the title of the former owner has passed to another by operation of law, and all parties concerned take notice accordingly.

Unless the statutes of the United States, therefore, expressly or by obvious implication, required that the money in suit should have been paid to Price, himself and to no one else, the course pursued by the Assistant Secretary can not be upheld.

The Statutes Prescribing How Debts Shall be Paid.

Congress has legislated upon the subject, and expressed its will in the act of 1853, embraced in section 3,477, Revised Statutes, relating to assignments. No other or further injunction is laid upon the administrative officers of the Treasury than to observe the requirements of this section. All else is left to those principles that obtain in the usual course of business. That a payment must at times be made to another person than the original creditor of the Government, is apparent from the language of the statute relating to such Treasury drafts as have been outstanding for three years or more. They are

"to be carried to the credit of the parties in whose favor such certificates, drafts or checks were respectively issued, or *to the persons who are entitled to receive pay therefor;* and into an appropriation account to be denominated 'outstanding liabilities.'" Sec. 306, Rev. Stat.

Beyond these two provisions, so far as we have been able to discover, there are no positive directions in the statutes of the United States, to which Treasury officials can point, that relieve them from the duty, common to all debtors, of regarding the effect upon their creditors of an assignment by "operation of law."

Views of a Former First Comptroller.

No better exposition has been made of the powers of the Comptroller of the Treasury than that of the late Judge Lawrence, in his discussion (1884) of the "Authority Over, and Disposition of, Treasury Drafts," in what is known as Keyser's case. First *Comptroller's Decisions*, iv, pp. 261–353. We do not cite Lawrence's expression of views as entitled to any larger measure of authority, than as they indicate a position taken and firmly adhered to at that period by the First Comptroller himself, a man who was not backward in asserting for his office all that justly belonged to it.

A single extract will show what was the opinion of Mr. Comptroller Lawrence as to the locality of a claim, or the right to receive payment from the United States.

"The drafts—the papers evidences in the case—are at present in the District of Columbia, but the right to the money, which they represent, exists in Tennessee, under an assignment by operation of the law of the State; and such assignments have always been recognized in this Department. The money which is to be paid on them is not necessarily in the District. The debts could be paid as well by drafts on the Assistant Treasurer at New York or San Francisco."

Judge Lawrence argues that the rule of the common law transferring the right of action on claims against private debtors to an ancillary administrator at the *situs* of the debtor, and also the rule as to garnishee process, or creditors, bill, where the debtor is personally served, has no application to claims against the United States. Page 280. He fitly remarks of the United States, that,

"In paying its debts it has but one *duty*—to pay the rightful claimant whose rights are fixed by the laws of his domicil, by the laws of Congress, or by national executive common law. It has no duty to perform in securing local creditors of the claimant whom it pays." Page 298.

The Comptroller also insists that the duty of paying devolves upon executive officers, and that no court may interfere and direct how these duties shall be performed. The position is unquestionably sound. By "national executive common law" the Comptroller should be understood as meaning those doctrines of the common law that from time to time have been applied by the executive officers of the Government in the discharge of the duty of paying debts.

That is to say, the action of a court having jurisdiction of the person, which has the effect to work an assignment by operation of law, is, according to the Comptroller, to be respected by the Treasury Department. Such respect results in no sense from an interference by the court, nor is there a direction by the court to the executive officer. It is the natural regard paid to a *status* created by law, a *status* which receives the same recognition at the Treasury that it does everywhere else.

The Injunction Order of the Supreme Court of the District of Columbia

Although our claim to this money was perfectly well known at the Treasury, we took the additional precaution to notify the Assistant Secretary on Friday, December 22,

both by telegram and letter, that Mr. Borcherling the receiver would "hold the United States responsible," if the money were paid to Price or his attorney. (Rec. ~~18~~) Notwithstanding our protest, that officer ordered payment to be made, and a draft to the order of Price, bearing date December 23, was that day handed to Price in person at the Treasury. The draft Price cashed on that same day. (Rec. ~~21~~)

The Assistant Secretary may have acted upon the theory that the practice of the Treasury Department with respect to injunction orders, and that alone, furnished to him a correct guide. It seems to have been the custom of the Treasury to pay little or no regard to an injunction from a State court forbidding a creditor from receiving a draft. On the other hand, the Secretary of the Treasury has been in the habit of recognizing in a spirit of "comity" injunction orders of the Supreme Court of the District of Columbia; and upon notice received of the service of such order within the District upon a defendant creditor, the Secretary has usually held the draft until the rights of the parties to the litigation should subsequently be determined. It was because he had been advised that the Department accorded this effect to the orders of the Supreme Court of the District that Mr. Borcherling, in his capacity as a receiver of the Chancery Court of New Jersey, applied to the Supreme Court of the District for an injunction upon Price. He feared that, unless he took this step, the Treasury officials would pay Price on personal application at the Treasury, notwithstanding the proceedings had in New Jersey.

Upon the Court of the District enjoining Price and his attorney (Rec. ~~11~~) the Secretary held up the account. The Court, however, having on the 22d December, modified its order of the 19th December, and declared that the restraint of Price should not apply to the sum of $7,900, which appeared to be due to Price's creditors residing in

the District of Columbia. The Assistant Secretary appears to have conceived that this latter action of the Court should be treated much as if it were a permission to Price to receive that sum.

Without delay the papers were prepared, and the money paid over to Price, in spite of the fact that Mr. Borcherling as receiver was insisting that it belonged to him and not to Price, and had asked to be heard in opposition. The error on the part of the Assistant Secretary consisted in disregarding the effect of the payment to a receiver and of the transfer to him of all Price's property, including property in the money due on Price's account at the Treasury. The Supreme Court of the District of Columbia by its decree, could not have transferred the property in this money back to Price, even had it undertaken so to do; which it did not.

The proceedings in injunction, both in New Jersey and in the District of Columbia, were had for the purpose of affording a remedy to the receiver. They were in no sense a measure of the receiver's title and right to the assets of Price. They were incidental to the chancery proceedings which had passed the title to Price's property. Whatever may have been the extent to which the court of the District was willing to recognize a right on the part of the New Jersey receiver to obtain in the District the benefit of an injunction order, it was no part of the duty of the Assistant Secretary of the Treasury to be governed by the action of the District court. The remedy by injunction in the District was purely local and incidental. On the other hand, the assignment to the receiver of all the personal property of Price, including his claim against the United States, was of general effect. It could not safely be ignored.

In short, the Treasury officers appear to have been misled by dwelling exclusively upon the injunction proceedings in the District, and leaving out of sight the effect of the operation of law that had taken place through the action of the

New Jersey court. They had no right to hand this money over to Price in any event; nor does the circumstance that it might enable him to pay alleged creditors resident in the District of Columbia, afford any excuse to the officials for their action, since the money no longer belonged to Price, but had passed to the receiver who represented Price's creditors, and to whom alone payment could legally be made.

III.

The Appellant's Argument.

A statement of fact in appellant's brief needs correction.

At page 3 counsel say that the "Supreme Court of the District of Columbia, on December 22, 1893, found, upon the representation of Fay and certain other parties, which representation was concurred in by Price, that $7,900 was due said Fay and said other parties as *bona fide* creditors of said Price, and released that amount from the operation of the injunction. Afterwards, and against the protest of the receiver, said sum of $7,900 was paid to said Fay by a draft made payable to Rodman M. Price and endorsed by Price, through his attorney, Fay."

The Supreme Court of the District, it should be explained, did not find that $7,900 was due Fay and other parties. It found that this sum "appeared" to be due, which is quite another thing. There was no finding of fact, no hearing of the parties on an issue joined. The procedure consisted of nothing more than the filing of *ex parte* affidavits and action taken thereon in the enforced absence of counsel for the receiver (who received no notice under the rules, Rec. 6), upon which, as a *prima facie* showing, the court passed an order that, it appearing to the court that the parties were creditors, the sum of $7,900 be exonerated from the effect of the injunction.

The money was not paid to Fay. It was paid to Price (as counsel admit on page 26 of their brief) by handing

him a draft to his order for that amount, which draft, it seems, Price afterward endorsed to Fay.

Counsel cite and discuss many authorities as to the effect given to the office of a receiver by a court of another State than that in which the receiver has been created. All this is brought forward to sustain the theory that "the title to the debt owed by the United States to Price could not pass to the plaintiff by virtue of the laws of New Jersey nor the decree of the New Jersey court." *Appellant's brief*, page 19.

This court has held that so far as the receiver and Price were concerned the title did pass. *Price* v. *Forrest*, 173 U. S., 424.

If the Treasury officials, therefore, are not "affected" by the decree of the New Jersey court, it must be for some other reason than the appellant's contention that this was a debt of the United States which could not pass to the receiver.

How far the Secretary of the Treasury should have been governed by the action taken in the New Jersey court was left undecided in *Price* v. *Forrest*. It is the question now before this court.

Had the Treasury officials a right to ignore the action of the New Jersey court, and pay this money over to Price?

Counsel present no views as to the duty and power of the Secretary of the Treasury in the premises. They liken him to a court, and speak (page 38) of his "protecting" Fay and other creditors; but they neglect to inform us what are his powers and obligations in respect to paying debts of the United States. The fallacy underlying counsel's reasoning is, that they assume that the Treasury official (whose duty is executive and not judicial, who must see to it that he pays a creditor of the United States, or his legal representative), occupies a like attitude toward the court of New Jersey, when he is dealing with a New Jersey creditor, that

another State occupies toward New Jersey when a New Jersey receiver wishes to bring a suit in that other State.

The position of the Secretary is wholly unlike that of a court. He has nobody to protect, no home creditor to satisfy, no policy of lien by attachment or garnishment to sustain. Moreover, for some purposes the Secretary is transacting business in New Jersey, which of course a court of another State cannot do.

What does it signify to the Secretary of the Treasury that the courts of one State give only a qualified recognition to the appointment by a court of another State of a receiver? How does it concern the Secretary that the decisions on this point are hopelessly discordant? He has no occasion to ask what, for example, the courts of Ohio think of the action of the courts of New York. His duty is comprised in ascertaining the identity of the person to whom the United States owes money. If that person has died, the Secretary wants to know who is his executor or administrator; if the creditor has become a lunatic, the Secretary would like to know that his committee can safely be dealt with; if a court of competent jurisdiction has divested the creditor of his estate and put it into the hands of a receiver, the Secretary would learn if the appointment be duly and regularly made, so that he may safely pay the receiver.

Of what consequence is it that in some other jurisdiction, for local reasons, a court will not grant such receiver the privilege of bringing suit except under certain conditions? Moreover, why should the Secretary stay his hand and refuse to pay the receiver because he (the Secretary) "acts under a different sovereignty" from that under which the court appointed its statutory officers? The Secretary has a plain duty to perform. He must find out who it is that the United States owes. If the chancery court had power to divest the creditor of his estate and transfer it to a receiver (and this court says that power to this effect was lawfully exercised, and that property in the claim was

transferred, as between Price and the receiver) what further office has the Secretary than to pay the receiver, who has power to take the money and give a quittance therefor?

We say that it became the duty of the Secretary to pay the receiver. Mr. Borcherling held the title as against Price, and nothing prevented the Treasury from dealing with Mr. Borcherling. It is fanciful to argue that the New Jersey court cannot "affect" the Secretary of the Treasury, because he, as an official of the United States, "inhabits a jurisdiction entirely independent of the State of New Jersey and its courts."

The obligation of the Secretary rests upon other grounds than that of being or not being "within the jurisdiction of" the New Jersey court. The Treasury recognizes the receiver, because the court had personal jurisdiction of Price, and the power to determine the status of Price toward this debt of the United States. There is no valid reason existing for a refusal to recognize the receiver, and discredit to that extent the court of New Jersey. The United States has nothing to gain by such conduct, consequently the propriety of acting in harmony with the decree of the court asserts itself, to the extent that we may pronounce it the *duty* of the Secretary to conform to its purpose and meaning.

The rule may be stated thus: Where a State court of the domicil of a creditor of the United States proceeds under statutory authority to withdraw from that creditor all his property (including a claim against the United States), so that by operation of law that property passes over to a legal representative of the creditor, viz: a receiver, it is the duty of United States officials, upon being notified of the transfer, to refrain from doing anything to defeat the purpose of the court, unless a positive law of the United States requires them to disregard the action of the court in the premises.

An United States court sitting in the territory of New Jersey would, as a matter of course, recognize the receivership of Mr. Borcherling. The Court of Claims in this suit

recognizes it. It is hardly profitable to undertake divining upon what ground this attitude of United States courts is to be rested. A somewhat similar principle governs this court when it, in certain circumstances, follows the construction of a State statute by the highest court of that State. The obligation is not derogatory to the dignity of the United States court; nor does it proceed from any fancied efficacy of the State court to impose its views upon another and independent tribunal. It is simply a conformity to the dictates of common sense, which points out that confusion and no possible advantage would inevitably result from adopting a contrary course.

In like manner the Treasury officials must see that no good reason exists why the receiver at the domicil should not be regarded as the legal owner of the debt. The acting Secretary unfortunately fell into error while temporarily filling the office of head of the Department. Perhaps had this official taken more time for deliberation he would have declined to pay money over to Price, who, by taking it, brought himself into contempt of court. The act of the Assistant Secretary was unwarranted, and it did not discharge the debt.

IV.

THE RECEIVER NOT HAVING BEEN PAID, THE UNITED STATES OWE HIM THE MONEY.

It is a familiar principle of the law of assignments that the debtor upon being notified of a valid assignment, and asked by the assignee to pay the debt, can not discharge himself from liability by paying the debt, or a part of it, to the original creditor. *Burrill on Assignments* (3d ed.), 575.

Paying $7,900 to Price after the receiver had notified the Treasury that he (Borcherling) had the right to collect it, could not discharge the debt that was legally due to the receiver. It was equivalent to paying a person not entitled to receive the money. The United States may have the

right to recover the money back as paid under a mistake; but this action of the Treasury officials did not discharge the debt due Mr. Borcherling, the claimant.

We respectfully submit that the judgment of the Court of Claims should be affirmed.

FRANK W. HACKETT,
CORTLANDT PARKER,
For Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 150.

THE UNITED STATES

vs.

CHARLES BORCHERLING, RECEIVER.

ON APPEAL FROM THE COURT OF CLAIMS.

ADDITIONAL BRIEF FOR APPELLEE.

CASE.

Rodman M. Price, deceased, of whose property the appellee is Receiver, was domiciled in New Jersey, of which State he had been a citizen during all his life.

A suit was pending against him in Chancery of New Jersey, since the year 1874, brought upon a judgment of the Supreme Court of that State, for seventeen thousand dollars ($17,000) and costs, upon which interest had accumulated, so that, on the 8th day of August, 1892, it amounted to more than $60,000.

It was brought originally by Samuel Forrest, the plaintiff

in said judgment, a purser in the United States Navy, resident in Charlestown, Virginia. Mr. Forrest died. His widow became his administratrix; and succeeded her husband in the prosecution. She filed a creditor's bill, seeking discovery of assets belonging to the defendant; and their application to the payment of the judgment. Her efforts to find any were, for many years, futile.

An act of Congress was approved February 23, 1891, entitled "An act for the relief of Rodman M. Price." Its language is as follows: "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the Secretary of the Treasury of the United States be and he is hereby authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting as the agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14th, eighteen hundred and fifty; and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him, upon such adjustment.

"Approved February 23, 1891."

Acting under this statute, the Treasurer of the United States settled that the United States was indebted to Mr. Price in the sum of $76,400. The date of this finding was August 31, 1892.

Mrs. Forrest, hearing of this act, and of the action of the Treasury regarding it, filed her petition in the Chancery suit in New Jersey, setting forth the possession by Mr. Price of the right to the money mentioned; that he had paid nothing on the judgment, nor could any property be found whereof to make it; and she prayed that an injunction might issue, restraining and forbidding him from making any endorsement of any draft or other negotiable security of the United States which he might receive from the Treasury;

that a Receiver might be appointed, and that Price be ordered to endorse any such draft to said Receiver, immediately upon its receipt, to the end that the amount thereof might be disposed of according to law and the direction of the Court.

Upon this, the Court granted a rule, that Price show cause why the injunction prayed for should not issue, upon a day mentioned in it, to wit, the twelfth day of September following; and that, in the meantime, he, the said Price, should be restrained and enjoined from endorsing any draft or other negotiable security of the United States, which should come to his hands, or to the hands of any other person to his use referred to in the petition, or to any person whatever, other than said petitioner or her attorneys, until the further order of the Court.

This rule was duly served upon Price, on the 10th day of said August, and on the day named, September 12th, Price appeared, by counsel, before the Chancellor. At his application, adjournment took place to another day; the order forbidding such endorsement continued; and before such other date, said Price received and endorsed away four such drafts, amounting together to over $45,000. And thereupon, on the 10th day of October, 1892, the appellee, Charles Borcherling, was by said court duly appointed Receiver of the property and things in action belonging or due to or held in trust for said Price, at the time of issuing certain executions, in said complaint mentioned, to wit, on the 4th of August, 1892, and previously, and especially of said four drafts, with authority to possess, receive and in his own name as such Receiver, sue for such property or things in action, and, among other things, the said Price was thereby ordered to convey and deliver to said Receiver all such property and things in action and the evidence thereof, and especially forthwith to endorse and deliver said drafts respectively and each of them, to said Receiver.

The statute of New Jersey, under which this receivership was created, uses the following language:

> "It shall be lawful for the Chancellor to appoint a Receiver *pendente lite* of the property and things in action belonging or due to or held in trust for said debtor as aforesaid, who thereby shall receive authority to possess, receive and in his own name as such Receiver, sue for such property or things in action. And the said Chancellor may order said judgment debtor to convey and deliver to such Receiver all such property and rights in action and the evidence thereof, and said Receiver shall in all respects be subject to the authority of the said Chancellor in accordance with the practice of the said court and shall and may dispose of the said property and things in action in conformity with the final decree in said cause."

The Receiver gave bond in the sum of $40,000 (and filed his official oath), as required by the court; a duly certified copy of the order of appointment was immediately sent to the Secretary of the Treasury and received by him, about which there is no controversy.

November 27, 1893, the Receiver, through Mr. Hackett, gave the United States Treasury notice by letter and copy duly certified of the order (Case XII); and made a formal demand, in writing, upon the Treasury, that all moneys awarded to Price as aforesaid, and not already paid to him, be paid to him, the Receiver, as such.

The United States owed the debt. Its Treasurer was its trustee of the money, to pay it to its owner; that is, to Price, or his legal assigns. This order and these notices told him that Borcherling was the legal assignee in his State; and, December 6, 1893, the Secretary of the Treasury was notified by the Receiver of the injunction which had been served on Price, dated December 4, 1893, by the Court of Chancery of New Jersey (Case Part XIII, XIV). This injunction forbade Price and his attorney, Mr. John C. Fay, from seeking to

obtain any part of this money. Notwithstanding, December 23, 1893, the Treasurer paid Mr. Price himself, by draft, $7,900, which draft Price endorsed to Mr. Fay. It is for payment to the Receiver of that sum that this claim against the United States has been brought:—the payment made being illegal, and the Treasurer having been so informed, and notified not to make it.

Certainly the United States is not discharged from a debt due to one man by paying it to another, especially when told not to do it. We sue for our debt. There was in the Treasury during the period reviewed, and after Price's breach of the command of the Chancery, by the endorsement away and use of the four drafts, thus committing a contempt for which, long after, he was punished, the sum of about $30,000, of which this $7,900 was part. Our claim in New Jersey Chancery, was for all this money. The Receiver's right was opposed only on one ground, *i. e.*, that the assignment to Borcherling was not by Price himself; and was not in the form required by the Statutes of the United States, (Sec. 3.477.)

The Court of Chancery of New Jersey, and the Court of Appeals in that State, and this Court, in the case of *Price* v. *Forrest*, 173 U. S., 410, all held that the transfer being an act of, and by virtue of, the law in the State of Price's domicile, the United States Statute had no application; that Borcherling was the owner of the claim; entitled to receive it in his official capacity, under the orders of the Court from which he received his appointment. It seems idle, considering that, to dispute Mr. Borcherling's right to this $7,900, which formed part of the sum, the ownership of which these courts adjudicated.

If the $23,100 left in the Treasury after paying the $7,900, ~~wrongfully~~ rightfully came to the Receiver, because the Supreme Court said it belonged to him, was not the ownership of the rest of the $30,000 in the Treasury likewise adjudicated?

Suppose Price had assigned the debt with the statutory

formalities; and the Treasury had then, after notice of the assignment, paid it over to any one else than the assignee, the United States would evidently have paid in their own wrong. What difference—if it be true that the Courts of New Jersey and the Supreme Court of the United States have all asserted this assignment by operation of law to be as effective as if by statutory form? What was the duty of the Treasury? The case of *Vaughn* v. *Northrup*, 15 Peters, 1, says that, in case of a claim due by the United States to an intestate, payment to his administrator appointed in the State of his domicile is right, and discharges the debt. Such claims are assets, having their *situs* in that State, and not in the district, or elsewhere; nor can the administrator be made responsible as such for the money he received elsewhere than where he got his letters. Names of officers are of little moment. An administrator is a receiver, with a different title. Administrators and receivers are both appointed by Courts—each becomes owner of property, in trust to obey the direction of the court; each becomes the sole owner of property in the domicile of the intestate, or of the insolvent judgment debtor; the debt due the intestate has its *situs* there. The language of Judge Story, on pages 6 and 7 of the case in 15th Peters, cited, runs thus:

> "It has become an established doctrine that an administrator appointed in one State cannot, in his official capacity, sue for any debts due unto his intestate, in the Courts of another State; and that he is not liable to be sued in that capacity in the Courts of the latter by any creditor, for any debts due there by his intestate. But it has been suggested that the present case is distinguishable; because the assets sought to be distributed were not collected in Kentucky; but were received as a debt due from the government at the Treasury at Washington; and so constituted local assets in this district. We cannot yield our consent to the correctness of this argument. The debts due from the United States have no locality at the seat of Government. The United States, in

their sovereign capacity, have no particular place of domicile; but possess, in contemplation of law, a ubiquity throughout the Union; and the debts due by them are not treated like the debts of a private debtor, which constitute local assets in his own domicile.

"On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment and give a full discharge of the debts due to his intestate in any place, where the government may choose to pay it, whether it be at the seat of Government, or at any other place where the public funds are deposited.

"If any other doctrine were to be recognized, the consequence would be that before the personal representative of any deceased creditor, belonging to any State in the Union, would be entitled to receive payment of any debt due by the Government, he would be compellable to take letters of administration in this district, for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconvenience. It has not, in our judgment, any just foundation in the principles of law. We think that Northrup, under the letters of administration taken out in Kentucky, was fully authorized to receive the debt due from the Government to his intestate."

Further language in the opinion strengthens these views.

It seems to us that this case, thus largely cited, decides the present one. Kentucky was the domicile of the intestate and of the administration and administrator. The Court decided that it was through this officer, created in the State of domicile, that a debt due to the intestate from the United States should be at once paid by the United States Treasurer. This, because the administrator *owned* the debt whose *situs* as property, was in Kentucky. And the Court states the distinction between the

action to be taken in the District of Columbia to collect a debt due a Kentucky intestate, by a citizen of the District, from a debt due by the Government itself; the ground being that ubiquity of the Government, which makes it present everywhere to pay its debts, though fixing the District as the place of doing so.

We do not say that the Treasurer was censurable, there being litigation as to the validity of the title made through the receivership, in delaying payment to Mr. Borcherling. But, when he paid any part of the money claimed to have passed under this title, to Mr. Price, he paid in his own wrong; and being the agent of the United States, the wrong must be righted by payment to the right owner.

In the case cited, the Treasurer refused payment; otherwise than to the administrator appointed in the domicile.

The case of *Wyman* v. *Halstead*, 109 U. S., 1068, is even more forcible as illustrating the duty of the Treasury in this case. Wyman, Treasurer of the United States, residing in Washington, D. C., issued three drafts; one to J. J. Pulliam, executor of J. M. Pulliam, or order; two payable to the latter person individually, or order. The three drafts were delivered to Halstead on account of the payees. The executor died. Halstead had the drafts in his possession. He took out administration on the assets of the two Pulliams, in the District of Columbia. Their domicile was in Tennessee. One Keyser sued Halstead, as administrator, for distribution, and obtained a decree in the District, ordering Halstead to endorse and collect the drafts and make distribution of the proceeds. Halstead obeyed this decree, endorsed the drafts, and demanded payment of them from Wyman, still Treasurer, and in funds. Wyman refused to pay them without the endorsement of administrators appointed in Tennessee, the domicil State. The District Court, on Halstead's petition, ordered a mandamus to Wyman to compel payment; and he brought the ques-

tion thus raised, by writ of error into the Supreme Court of the United States.

That Court reversed the decree for mandamus, holding the course of the Treasurer to be right, notwithstanding he had had the order of the Court in the District; because the property in the money was in the Tennessee administrator if appointed, or whenever appointed, and the District administrator had no right in it. The money was assets where the creditor lived, not in Washington, although the money was on deposit there, in the Treasury, to pay the drafts in dispute.

Now, it is repeated that the administrator has right through the law of the State where he is appointed; so has a receiver. The money due by the United States to a creditor has its *situs* where that creditor is domiciled. It has none in Washington. The Treasury there is the place to pay it; but the ownership of it is in the administrator appointed by the State. So the then Treasurer held the money for the Tennessee administrator, despite the decree of a Court here in the District requiring him to pay it here, and to pay it to an administrator appointed here.

Contrast his action with that of the Treasury in this case, which, after notice, pays over this sum, because the District Court says, "We will not prevent you." That is the full effect of that Court's action; there was no direction that it was right to do it. The Court had recognized the right of the Receiver, and granted an injunction preventing paying to Price; but then said, "Creditors resident here, filing affidavits from which it appears they have *bona fide* claims for services to the extent of $7,900, the injunction order should not operate to affect that sum."

The injunction only restrained Price from receiving; it did not enjoin the Treasury from paying. That could not be done. He was the representative of the United States. The evident expectation of the Court was that in some jurisdiction, at some future time, in proper manner, with notice

to both parties the rights claimed honestly by creditors might be discussed and then Price might receive or not, according to the Court's opinion.

What does Price do but hasten and get this sum from the Treasury. If the mandamus of the Court in the Wyman case could lawfully be disregarded, as the Treasurer then did, and the Supreme Court of the United States approved, how much more should the Treasury in the present case have adhered to the doctrine that this was Jersey business, and for Jersey courts, when all the Court said was, "We will not interfere, take your own course."

The case reviewed, and many others, establish that "the United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, a ubiquity throughout the Union." Does not this ubiquity destroy the doctrine grafted upon the doctrine of comity more properly called, as relates to States in America, the doctrine of nationality, that each State, though it gives effect to receiverships and such like trusts for creditors, created by the laws and the judicial decisions of other States, will first pay, out of assets legally existing in them, but found in it, the debts due to their own citizens? Is not this especially true as regards debts due by the United States, and payable at Washington, to parties domiciled elsewhere? Can foreign attachment garnishee debts due by the United States to parties living abroad? Can the debt due by the United States *to* an insolvent debtor discharged in New Jersey under its insolvent laws be seized in the District to satisfy a creditor there? This well-settled doctrine of ubiquity makes the United States resident of every State. Can a resident of New Jersey, owing a resident of New Jersey, be the subject of this exception to the rule of comity? That is the case. The United States, which owes this debt, is a resident of New Jersey, as well as of every other State.

If a creditor resident in the District can have the *choses in action* of his debtor domiciled elsewhere, and though a

Receiver there has been appointed by Chancery, applied to the satisfaction of his debt, he must seek and obtain the intervention of a court. The debtor cannot himself decide the question of right, when it is an exception to the general law of comity, and when he is warned by the Receiver not to do it; but to pay him, as assignee of the debt. That right must be established by a court—the Executive cannot lawfully exercise it—and on proof—with the presence, and right of contention of both parties. In this case, no court said "no," and no court said "aye." It simply would not interfere; and it came to the conclusion not to interfere on *ex parte* affidavits of the parties interested, without notice of the inquiry or the question to the Receiver or his representative. It made the payment to the party who owed creditors the money, not to the creditors themselves. Did he owe them? Was the large sum paid their right? For what services? As compensation for lobbying a bill through Congress? In New Jersey, that forms no consideration for indebtedness; and we suppose such is the case everywhere, in the presence of so much well known legislative corruption. The case shows $13,500 paid before in the hands of Mr. Fay, through a draft which was to be kept unendorsed to meet an alleged lien for services, until further order (Case VI.) Was the sum of these two ($21,400) really due? Price endorsed both drafts to Fay. Was it for his services? All these were pertinent questions. All to be decided by the will of the Treasury! As if the Executive were constitutionally capable of judicial action!

We pause to ask whether the Court can doubt that the Treasury was defrauded. But not by us—in spite of us—begging the Treasurer only to wait, and let the Court settle our right; and proving, at the same time, by copy of an injunction (P. XII, XIV, XV), that Price and Fay were a second time enjoined from taking any part of this money.

We stop at this point, to call attention to the cases cited on appellant's brief at page 17.

If the court will examine them, they will find that they have no bearing whatever in favor of defendant. In a New York case, 23 N. Y., *Moultrie* v. *Hunt*, the Court say, page 396, "All civilized nations agree, as a general rule, to recognize title to movable property created in other States or countries, in pursuance of the laws existing there, and by parties domiciled in such States or countries."

And that is precisely the case we are discussing. The Court of Chancery of New Jersey, the Court of Appeals of that State, and the Supreme Court of the United States, have each and all declared that the title to all the interest which Rodman M. Price had in the debt due him from the United States passed, by virtue of the Receivership and the Statute Law of New Jersey, to Borcherling, the claimant here.

As to the idea that no court of the United States has ever held that such a foreign Receivership passed title to property within its own sovereignty, except by virtue of comity, implied by the argument of defendant, we call attention to the language of Mr. Justice Miller, in *Goodman* v. *Niblack*, 102 U. S., 556, as to the U. S. Statute as to assignments of claims on the Treasury:

> "We held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harrass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made. In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor *of all his effects*, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There

> can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853."

Here the Court expressly holds that assignments by operation of law or voluntary assignments in general terms, include claims against the Government. In Erwin's case, 97 U. S., 392, the transfer of a claim to an assignee in bankruptcy covered a debt due by the United States. Other cases agree; and all show that States hold that claims against the Government passed by operation of law; and so created property in assignees, as to a debt due by the Government.

Too great attention cannot, however, be given to the fact that Mr. Borcherling gets his rights, not through an order of Chancery, made in exercise of the general equitable jurisdiction of the Court of Chancery, but under the statute law of Mr. Price's domicile State. The act under which this receivership was created was passed in 1875, and it authorizes appointment by Chancery of a Receiver of the property and things in action, and so forth, as already quoted, "who *thereby* shall receive authority to possess, receive, and in his own name as such Receiver sue for all such property and things in action, and the evidence thereof. And the said Chancellor may order said debtor to convey and deliver to such Receiver all such property and rights in action, and the evidence thereof."

In *Miller* v. *McKenzie*, 2 Stew., 292, the late Chief Justice Beasley, describing a receivership similar to that of Mr. Borcherling, says:

> "In regard to the personal property of the debtor —and it alone is here in question—it seems clear to me that one of these receivers, by the act appointing him, becomes vested with the title. Defining the effect of his appointment, the act says that he *thereby* shall receive authority to possess, receive, and, if need be, in his own name as such Receiver sue for property or things in action. These terms are quite comprehensive, and the statute being a remedial one, it would be illegal to limit their effect, unless called for by very cogent considerations."

The title of Mr. Borcherling cannot be divested by any court, either in New Jersey or elsewhere. From the moment of his appointment and its completion by filing bond and taking the oath of office, Rodman M. Price had no personal property anywhere. It all passed to Borcherling. Yet the Treasury decided that $7,900 of it did *not;* that it remained Mr. Price's; and they gave it to him, although notice of this claim was pressed upon them.

As already stated, the case of *Redfield, Receiver*, vs. *the United States*, in this Court, 27 Court of Claims, R. 393, is entirely in unison with our contention here. There is a slight difference between the facts of that case and ours. The New York Statute was not as direct in giving effect to the appointment of a Receiver. The Jersey Statute, describing the officer as the Receiver of property and things in action, and so forth, of the debtor, goes on to state that the Receiver *thereby* shall receive authority to possess, and so forth. The appointment transfers the title. The New York Statute makes the power more dependent on the conferring of authority by the Court. In the Redfield case, the New York Statute had ordered an assignment of the special debt or claim; and one had been made, not in the form required by the United States Statute. That fact gave opportunity for attack; but this Court disposed of that by holding that the assignment was merely in aid of the ap-

pointment of the Receiver. In our case, we have no such special or separate assignment; but one was ordered. The order was served, but disobeyed, and proceedings in contempt filed. Such a state of things calls upon this Court to hold that all rights which the assignment directed to be given did actually pass. It, however, does not seem to me to be necessary to lean upon anything except the plain words of the statute.

The decision of this Court in the Redfield case cannot, therefore, be overruled; and it is observable that our learned adversary pays no attention to it in his industriously constructed brief.

The position taken by the learned counsel is directly in the teeth of the decision of this Court. He even scorns to defend the action of the Treasury, on the ground that this special $7,900 was rightfully taken from the fund, because it was expected to be paid to resident creditors. His contention is that the law of New Jersey had no force in this District, and that the Receiver had no title to a dollar of the money awarded Price. And he bases this contention on the case of *Ogden* vs. *Sanders* and that of *Booth* vs. *Clark*.

Ogden vs. *Sanders* simply declared that a creditor living out of the State does not lose his claim through an insolvency law of the State where his debtor resides. It has no bearing on the question whether the insolvent may not collect a debt due him in another State, by the use of its laws—by a suit, for instance, brought by the assignee for the use of the insolvent. And it certainly does not decide the point upon which argument has thus far been made.

The mistake of counsel as to the cases he cites and reviews is this. We say that each State has the sole right of authorizing property, creating it, and of regulating its transfer. And when that transfer is made according to that law, it changes the property. Counsel on the other side contend that if the property is located in another State, though temporarily, that State gains complete control of it,

and if it be a chose in action refuse to respect the title a citizen of another State has to it. And the counsel cites decisions as to insolvency laws where courts say that the right of the foreigner shall not be taken away by laws another State passes. Some of these decisions are cases where land in a State is claimed by a foreigner who has not a deed according to the forms of the State where the court is—and none of them are cases where choses in action due by the United States are in question. Then there is no foreign State—no need of courts. The contest is between citizens in law of the same State.

Booth vs. *Clark* is a peculiar case. It cannot be fully comprehended without studying with it—perhaps before considering it, the case of *Clark* vs. *Clark*, or *Hackett*, 17 Howard, 315, argued and decided at the same term.

The dispute in both cases was about the same sum of money, $69,429.14. This sum was awarded by commissioners, acting under the treaty between the United States and Mexico, to one Ferdinand Clark, as the net avails of a claim made by him for the unlawful seizure of a vessel called the Louisiana, which award the United States had agreed to pay. The award was made April 15, 1851. A month afterwards, Benjamin C. Clark, of Boston, filed his creditor's bill in the circuit court of the District of Columbia, claiming the fund for himself and other creditors of Ferdinand Clark, who had taken the benefit of the United States Bankruptcy Law, March 22, 1843, in New Hampshire. Soon after this bill was filed, Hackett, assignee in that bankruptcy, filed his bill in the District of Columbia Court, claiming the entire fund for distribution amongst the creditors. Hackett alleged fraud by the bankrupt, and that he had concealed this property from his creditors. The answer of Ferdinand Clark denied fraud, set forth his proceeding, and alleged that a deceased assignee had sold this claim at public auction, that R. M. Clark (who was his sister),

bought it, and he had bought from her; and so defended his own ownership.

In his first schedule, it appeared, the bankrupt had not mentioned this claim; but in an amendment after his discharge, it was alluded to thus:

"U. S. Government, Claim.

"Spanish Government, Claim.

"Buenos Ayres Government, Claim.

"Mexican Republic, subject to a Mortgage, Claim."

Ferdinand Clark was prosecuting the claim before he sought the benefit of the Bankrupt Law, and continued this prosecution until it was allowed—for eight years or so. The Court (p. 320) was satisfied that the bankrupt intended to rid himself of his debts, and then buy the claim, through his sister; for his own benefit (See p. 318, Judge Catron's opinion). His sister paid, at auction, $2 for the claim.

The decree appealed from ordered that the funds should be paid over to Hackett for distribution in the Bankrupt Court of New Hampshire, amongst the creditors of Ferdinand Clark; and that decree was affirmed by the United States Supreme Court.

It was a flagrant case of attempted fraud. The fund was in the United States Treasury to await the decision of the courts.

Booth v. *Clark*, as stated, involved the fate of this same fund, 17 Howard, p. 323. The suit was substantially between Howard, as assignee of Clark in bankruptcy, and Booth, Receiver in the New York Chancery under a creditors' bill; and that it might be determined which of them had the official right to this Mexican fund (See p. 329).

The New York Receiver claimed under his appointment by the Court of Chancery, and he was appointed before the bankrupt petition. His right depended upon the Statute of New York. That Statute, looked up from the citations of

the able argument of Mr. Bradley, of this District, is found to authorize the creditors' bill, and the appointment of a Receiver under it. And the first thing to be remarked is this:—the Statute of New York gave no force as a conveyance to the *appointment* of a Receiver. The procedure of the State at that time was that the Court appointed the Receiver, that he was thereby legally authorized by the Court to be *custodian* of the debtor's property; but that its *title* was not conveyed until and except by a conveyance made by the debtor, in obedience to an order of the Court. No such order had been made, no such conveyance had been executed, a fact upon which Mr. Justice Wayne, in delivering the opinion of the Court, dwells strongly (pp. 333–339). And he shows, in his opinion, the difference between adjudications in England and in this country to be; that in England, the property of the bankrupt is vested in the Assignees in Bankruptcy by legislative enactment (p. 335) that,

> "It vests the assignee with the title to the property, from the date of the conveyance, it having been previously vested in the Commissioners, for conveyance by them to the assignee. As to the bankrupt's personal estate, the statute looks beyond the debts and effects of a trader within the kingdom, and vests them in the Commissioners in every part of the world.
>
> "The last is done in England, and upon the principle that personal property has no locality, and is subject to the law which governs the person of the owner. As, by that law, the property, of a bankrupt became vested in the assignee for the purposes of the assignment, his title to such property out of England is as good as that which the owner had, except when some positive law of the country in which the personal property is, forbids it."

Now, this language shows that if the act of New Jersey which governs this case had existed in New York, the doctrine of comity could not have been invoked, nor any

such conclusion reached as that the owner of personal property could not sue for it anywhere, in some mode of procedure. Administrators holding promissory notes can sue on them out of the State, if they bring their suit as endorsees of the payee; and so in other cases of title held by officers. This, however, is of little consequence here. The thing to be noticed is, that the Statute of New Jersey enacts that,

> "It shall be lawful for the Chancellor to appoint a Receiver *Pendente lite* of the property and things in action belonging or due to, or held in trust for said debtor, who *thereby* shall receive authority to possess, receive, and in his own name as such Receiver, sue for such property or things in action."

Evidently the draftsman of this act may have had the English law in view. The word "thereby" means, clearly, by the appointment. So Jersey Courts have ruled, in this very case; and so the United States Supreme Court has done, by affirming their judgment.

Observe, too, that the proof shows an order of conveyance of all such property and rights in action, and the evidence thereof. So that all power given by the act is exhausted.

The reply, then, to *Booth* vs. *Clark*, is, that the law of New York State, upon which that decision was founded, was substantially different from that of New Jersey, which underlies this suit; and which is like that of England. And that, had the New York law been like that of England or New Jersey, the decision must have been different and directly in our favor.

Let it not be forgotten that we claim this money as money existing in New Jersey, where Price had his domicil; and so, lawfully, the subject of the statute there passed.

Nor again, let it be forgotten that the United States Government, being ubiquitous, is not a foreign corpora-

tion in New Jersey; so that the doctrine of the freedom of personality having actual existence in a foreign land, does not apply.

Note further, that this case of *Booth* vs. *Clark* was a case where justice lay all on the side of the appellees. The bankrupt assignee really owned this fund—Booth represented one creditor only. The appellee, Hackett, represented all creditors, as assignee in Bankruptcy of Clark. The fraud of Ferdinand Clark was palpable. If Booth's bill was successful, that fraud would have been so, likewise, at least, to an extent. Camera, for whose judgment Booth was receiver, if an honest creditor, would have his right on the distribution of the fund in bankruptcy. The equities of the case were, therefore, strongly against Booth and in favor of Hackett.

If this were a case where the doctrine of comity applied, there is still no law in the District of Columbia, or created by United States courts, grafting upon the acts of other courts of other States any exception in favor of citizens of the District; especially not when it operates upon the debts due by the United States itself to parties domiciled in a State, and not in the District. We refrain from pressing an argument evidently felt by adverse counsel; that this doctrine of exception in behalf of resident creditors from the law of comity, was opposed to the prevalence of the doctrine of nationality. It is not necessary, we think, that any argument upon policy should be urged by us. And yet it is not without force.

Rightly considered, is not this decision of *Booth* vs. *Clark* a decision point blank in favor of our contention? No one can doubt that Rodman M. Price was domiciled in New Jersey; no one can doubt that the *situs* of *choses in action* follows the domicile of the debtor; no one can doubt that New Jersey's Legislature had the right to enact that the ap-

pointment of a Receiver changed the title of property there situated; no one can give other than complete force to the language of New Jersey's Statute, when it declares that all the estate of a debtor, upon an order of the Chancellor, appointing a Receiver, passed *thereby* to him. No one can deny that the United States having citizenship in New Jersey should respect her laws as to the conveyance of personal property.

The opinion of the Court, in *Booth* vs. *Clark*, approves the English rule, upon the ground that, by the Statute of England, title to personality, wherever it was, belonging to a domiciled Englishman, passed to the assignee in bankruptcy by virtue of the appointment of the Commissioners.

Plainly, then, *Booth* vs. *Clark* affirms the very doctrine for which we contend, to wit: That the property in this debt due by the United States, having passed to the Receiver by operation of law, the Treasury should pay it to him.

The case seems to be within the compass of a few simple propositions:

1. The *situs* of this personal property of Price was in the State of his domicile, New Jersey.

2. The law of that State transferred it to Mr. Borcherling.

3. It became his by the operation of the law of New Jersey, on the 10th of October, 1892, certainly—perhaps his title related back to August 4th, the date of the issue of execution against Price.

4. After notice of this Receivership, the Government had *power*, no doubt, to give it to a stranger; but no right, any more than an individual.

5. It did, however, hand over $7,900 to the man who had no right to it.

6. If it gave the money to the people who posed as creditors of Price, it did it without any lawful right whatever.

7. If the Treasury officers gave it to him, Price, with the knowledge that it was for them, *i. e.* the people who posed as Price's creditors, they really gave it to *them.* Worse than that, they gave it to a man who, in taking it, acted in contempt of court and of the law, and this the Government knew, and to men who confederated with him in such contempt, which was likewise patent to the Government.

8. The doctrine that a Receiver, resident out of the particular jurisdiction, though allowed to come into it and assert his right, is subject to the claims of residents for any debt due the party represented by the Receiver, is a doctrine for a court, not for the debtor. The Government stands as a debtor. It owed Price. It could not, after Price had assigned the debt, say "we will help his friends. They live here; or, we will pay his debt to A; for he lives here."

9. Borcherling's action against the Government, in the Court of Claims, is *ex aequo equo et bono,* for money had and received for his use, a claim in respect to which the party would be entitled to redress against the United States, either in a court of law or equity, if the United States were liable to suit there. And the United States in the Court of Claims only makes such defences as an individual would have.

10. This payment was obtained in fraud and contempt of court; and if sustained, it will be taking the property of one man and giving it to another. The United States has no such duty, right or wish.

Before concluding, it may be desirable formally, though tersely, and in their order, to contest the propositions laboriously argued by counsel for the appellant.

First. It is insisted that "the manner in which the United States shall pay a debt which it owes, to whom it should be paid, whether it shall be paid at all, and whether it may be sued for, are matters entirely within the control of the United States, and beyond the control of the laws and courts of New Jersey."

True, if the United States chooses to exercise its power through act of Congress. If it does not, its will is to follow the rules of common law and of equity, being the system of Chancery law. In two cases, perhaps in others, it has exercised its power: One in organizing the Court of Claims, in which court it consents to be sued—a sort of Court of Arbitration in which judgment can be obtained by parties oppressed; but to which it has given no power to enforce its decisions. The other, the act of 1853, Sec. 3477, U. S. Rev. Stat., regulating the manner in which voluntary conveyances of claims against the United States, not those which occur by operation of law, are to be effected.

And this court, by numerous decisions, has declared substantially that the law of the domicil State operates where the transfer is not voluntary, but by operation of law.

Second. "A statute of New Jersey or a decree of a New Jersey court acting under such statute, can have no effect beyond the sovereignty of New Jersey, except at the pleasure of the sovereignty wherein such effect is sought."

We *need* not deny this; for we look in vain into the laws of Congress, which is the Legislature of the District of Columbia, for a word which forbids that a right of property obtained under a statute of New Jersey cannot be enforced in the District of Columbia—by a party owning that right—and especially that it cannot be declared and affirmed by

the very tribunal constituted by the Congress of the United States for that purpose.

The "pleasure of the Sovereignty" of the District of Columbia is that a party domiciled in New Jersey, having choses in action assigned to him by another person also there domiciled by operation of law, due from the Government of the United States, payable by its Treasurer by direction of an act of the United States Congress, to the original owner or his assigns, shall in this right-seeking Court of Claims, have the right of recovery in this District, and shall be declared to possess it.

Third. "The United States does not recognize, through comity, a statute of a State or a decree of a State transferring to a Receiver title to, or the right to possession of a debt owed by a person beyond the jurisdiction of such State; and so far as the United States is concerned, such a Receiver can sue only in the jurisdiction appointing him."

We answer:

1. The doctrine of *Comity* has nothing to do with the declaration of right which is, by permission of the United States, now sought in its Court of Claims. In some matters, the United States, in this District, has the position of a State. The action of Virginia and Maryland, authorized and contemplated in the Constitution of the United States, and perfected by their acts of cession, were a transfer of State government, to the nation, over the territory they ceded. It was bound—or will so hold itself—by Article LV, Section 1, of the United States Constitution, which directs that "full faith and credit shall be given in each State to the public *acts, records*, and *Judicial proceedings* of every other State." Such credit cannot be given, if the force of such "acts" and "proceedings" in any State can be denied in the District. Over every debt due by anyone to Rodman M. Price, New Jersey had jurisdiction; because, under law thoroughly es-

tablished in this Honorable Court and everywhere else, it had its *situs* in New Jersey. By virtue of public acts and judicial proceedings there, it became the property of Borcherling, Appellee, here. He is here, by permission—yea, invitation—of the United States, seeking a declaration that the $7,900 to which the case relates, was his, and that an officer of the United States Treasury gave it away to another or to others, when duly informed of *his* rights.

2. The doctrine of Comity does not enter into this case; because it only has place between citizens of different States, whereas the Government of the United States has ubiquity, and is a citizen of every State in the Union, and of New Jersey among them. Being thus present in New Jersey, it is bound by the local law of that State, and so itself wills that the debt it owed to Price had passed, not voluntarily, but by operation of law, to Borcherling. If this debt to Price had been incorporated in a negotiable draft given by the United States to him, but seized by Borcherling, it would have been recognized as his beyond question and been paid on presentation by him. Why not, if the draft were not drawn? The debt is the thing—not its form.

3. Upon the view favored upon the side of the Appellant, that Borcherling had right, but that it was subject to the restraint upon comity, that before the amount of the debt went to Borcherling, a foreigner, it should be used first to pay debts due by Price to parties resident in the District, (a view which we entirely deny), we have further to say, that the *debtor* cannot act judicially, and determine whether the resident claimant was a creditor or not. Some court must decide the question, having jurisdiction over the matter, notice being first given and proceedings taken, so as to bring the question of indebtedness fairly before it, for adjudication. Neither the United States Government or its Treasurer or

other such officer has the right to constitute himself arbiter, and on *ex parte* evidence, give judicial decision.

4. Especially is this last proposition true when the circumstances in this case are considered—when there was no notice, no hearing, no adjudication by the court—nothing but an *ex parte* affidavit; and when the Judge, *ex parte* likewise, simply decided that his injunction preventing payment to Price did not cover the $7,900.

That still left the action as to this amount to the Treasurer, who could exercise no judicial power, and who acted illegally, probably in ignorance. Nor did the Treasurer carry out the "comity" claim; for he gave the draft to Price himself, who he knew was restrained from taking it, by the highest court in the State of his domicile.

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